Attached is my Comment in opposition to recently proposed federal legislation that would raise taxes on U.S. manufacturers of exported goods. If you have any questions regarding this comment, please call me.

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SENT VIA E-MAIL AND
U.S. MAIL

The Honorable Senators Chuck Grassley
and Max Baucus
U.S. Senate Committee On Finance
219 Dirksen Senate Office Building
Washington, DC 20515

The Honorable Bill Thomas, Chairman
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Gentlemen:

As an attorney for numerous small manufacturers and on behalf of the Federal Tax Committee of the Wisconsin Institute of Certified Public Accountants, I am responding to requests for comments to the Tax Technical Corrections Act of 2006 (H.R. 6264/S. 4026).

If signed into law, section 7 of the Tax Technical Corrections Act of 2006 would eliminate the incentive aspect of IC-DISCs for tens of thousands of closely-held manufacturers, a sector of the economy crucial to long-term growth and prosperity. This comment explains why the proposed legislation is inappropriate and would go against the longstanding policy of aiding domestic manufacturers of exported goods.

1. <u>The Proposed Legislation Hurts U.S. Manufacturers of Exported Products</u>. Manufacturers are the bedrock of a prosperous economy. Manufacturing jobs generally pay higher wages and have more generous benefits than jobs in other sectors. Furthermore, manufacturing jobs are considered especially valuable because they import wealth from around the world. Through their interactions with others, manufacturers spur demand in the retail, service and not-for-profit sectors. Now, however, with manufacturers closing U.S. plants and moving production to less expensive foreign locations, this ripple effect is working in reverse, magnifying the economic disruption

caused by manufacturer exodus. The proposed legislation would effectively eliminate a key export incentive that helps put domestic manufacturers in an economic position closer to that of their foreign counterparts. Eliminating the incentive aspect of IC-DISCs will negatively effect domestic manufacturers, leading to reduced exports, lower productivity and fewer jobs.

2. The Proposed Legislation is Unnecessary. More than merely providing a "technical correction," the proposed legislation would work a substantive change by eliminating an export benefit that has existed without question. Nothing in the text or legislative history of the Jobs and Growth Tax Relief Reconciliation Act of 2003 suggests that the current tax rate on dividends paid from an IC-DISC is something that requires correction.

Furthermore, the Joint Committee's description of the Tax Technical Corrections Act of 2006 tries to argue that the proposed legislation is similar to the denial of a dividends received deduction on dividends received from an IC-DISC found in Code section 246(d). That section does deny the dividends received deduction with respect to dividends received from IC-DISCs because those dividends have not yet been subject to corporate-level tax. Code section 246(d)'s sole purpose is to prevent corporate shareholders of IC-DISCs from avoiding corporate-level tax on IC-DISC dividends altogether. However, this problem does not exist with respect to non-corporate IC-DISC shareholders because there is no corporate-level tax to avoid.

3. The Proposed Legislation Goes Against the Longstanding Policy of Aiding Domestic Manufacturers of Exported Goods. A review of the history of export incentives shows that Congress has a longstanding policy of aiding domestic manufacturers of exported goods and has only abandoned this policy after significant pressure from our foreign trading partners. Our foreign trading partners have not objected to the rate of tax paid by individuals on dividends received from IC-DISCs, making abandonment of this policy through the proposed legislation inappropriate.

In 1971, Congress enacted the domestic international sales corporation ("DISC") regime in an attempt to stimulate U.S. exports. A DISC afforded U.S. exporters some relief from U.S. tax on a portion of their export profits by allocating those profits to a special type of domestic subsidiary known as a DISC. In the mid-1970s, foreign trading partners of the United States began complaining that the DISC regime was an illegal export subsidy in violation of the General Agreement on Tariffs and Trade ("GATT").

In 1984, Congress enacted the foreign sales corporation ("FSC") regime as a replacement for the DISC regime in response to the GATT controversy. The FSC regime required U.S. exporters to establish a foreign corporation that performs certain activities abroad in order to obtain a U.S. tax benefit. Rather than repeal the DISC regime, Congress modified it to include an interest charge component, making all DISCs from that point forward IC-DISCs. Manufacturers often did not take advantage of the IC-DISC because until recently other regimes, such as the FSC and ETI exclusion, were more attractive.

In 1998, the European Union filed a complaint with the World Trade Organization ("WTO") asserting that the FSC regime, similar to the original DISC regime that preceded it, was an illegal export subsidy in violation of the GATT. In 1999, the WTO released its report on the European Union's complaint, ruling that the FSC regime was an illegal export subsidy that should be eliminated by 2000.

In 2000, Congress responded to the WTO's ruling by enacting the FSC Repeal and Extraterritorial Income Exclusion Act of 2000. The new extraterritorial income ("ETI") exclusion afforded U.S. exporters essentially the same tax relief as the FSC regime. Consequently, the ETI exclusion did not end this trade controversy as the WTO subsequently ruled that the ETI exclusion was an illegal export subsidy that should be eliminated.

In 2004, Congress enacted the American Jobs Creation Act of 2004 ("2004 Act"), which phased out the ETI exclusion while phasing in a domestic production deduction ("DPD"). With the elimination of the ETI exclusion, the only remaining incentive for exports was the IC-DISC. Rather than encouraging exports, the DPD allows a deduction for certain domestic production activities. While exporting manufacturers may take advantage of the DPD, the tax relief (and concomitant incentive to export) of the DPD is far less than that afforded by the IC-DISC.

As the foregoing history shows, Congress has only removed export incentives under significant pressure from our foreign trading partners. As our foreign trading partners have not objected to the tax rate on dividends received from IC-DISCs, it is inappropriate for Congress to abandon its longstanding policy of aiding domestic manufacturers of exported goods.

4. The Proposed Legislation Unfairly Impacts Exporters. The proposed legislation unfairly impacts exporters who have relied on current law to arrange their affairs by applying retroactively to all dividends paid from IC-DISCs since the date of its introduction. Even in the face of challenges and discontent by the European Union, the transition periods for each of the FSC and ETI regimes began several months after the dates of their introduction and lasted at least two years.

Here in the Midwest, America's heartland, we are home to more than one-third of all manufacturing jobs in the United States and generate more than $100 billion in revenue from exports each year. The proposed legislation will harm tens of thousands of hard-working small businesses whose value to the economy cannot be overstated. Furthermore, the proposed legislation has no basis in the text or legislative history of the Jobs and Growth Tax Relief Reconciliation Act of 2003 and penalizes exporters who reasonably relied on the law. Accordingly, section 7 of the Tax Technical Corrections Act of 2006 should not be enacted into law.

Yours very truly,

Robert J. Misey, Jr.

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